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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,225	09/19/2003	Joseph J. Estwanik	18391.012	7016
21878	7590	10/18/2005	EXAMINER	
KENNEDY COVINGTON LOBDELL & HICKMAN, LLP 214 N. TRYON STREET HEARST TOWER, 47TH FLOOR CHARLOTTE, NC 28202				AMERSON, LORI BAKER
ART UNIT		PAPER NUMBER		
		3764		

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)
	10/667,225	ESTWANIK, JOSEPH J.
	Examiner L Amerson	Art Unit 3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 July 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-15 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-15 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 19 September 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

1. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. The indication of allowability to claims 4 and 10 has been withdrawn.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

a. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker in view of Nafe, Metzger and Hoff. Parker discloses a rocker device (fig. 1) having a lower rocking surface having a constant radius on a portion of the lower surface (fig. 1; 13), arcuately shaped (fig. 4) on a flat surface and an upper platform surface (14) having a recess (4) defined by platform surfaces (3, 5) fixedly attached between the lower rocking surface and the upper platform surface. Regarding the language, "for stretching a user's leg muscles," "for rocking motion," "for receiving a user's knee in a bent condition of the user's leg", "for stretching the user's quadriceps upon rocking motion" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. Parker does not disclose, and Applicant does not specifically state, a constant radius on the entire surface. Thus, Nafe and

Metzger teach a constant radius. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Parker in view of the teachings of Nafe and Metzger such that a constant radius on the surface is for rocking the device. Regarding the angularly converging platform, Hoff teaches an angularly converging platform. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Parker in view of the teaching to Hoff such that two angularly converging platforms are capable of receiving a user's knee. As to claims 2 and 8, the recess is cushioned (fig. 4; 11). As to claim 3, the rocker device has at least one handle (7). Regarding the language, "for transporting the rocker device" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 5, the two platform surfaces are disposed at an angle to one another (fig. 4). Regarding the language, "for receiving a user's knee in bent condition" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 6, the upper platform surface is configured to rest on a generally flat surface (fig. 2-3). Regarding the language, "allowing a user alternatively to position the user's heel of the user's leg on the lower rocking surface for stretching the user's hamstring muscle or to position the user's foot of the user's leg on the lower rocking surface for stretching the user's calf muscle" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 7, see the paragraph for

claim 1. Additionally, a first position (fig. 1) wherein the lower rocking surface rests on a generally flat surface and a second position (fig. 2-3) wherein the upper platform surface rests on a generally flat surface. Regarding the language, "allowing the user to position the user's knee in a bent condition of the user's leg in the recess of the upper platform surface for stretching the user's quadriceps upon rocking motion," and "allowing a user to position alternatively the user's heel of the user's leg on the lower rocking surface for stretching the user's hamstring muscle or to position the user's foot of the user's leg on the lower rocking surface for stretching the user's calf muscle" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 9, see the paragraph for claim 3. As to claims 12-14, see the paragraphs above regarding the apparatus furthermore column 1, lines 22-25 regarding the method of use. Parker is capable of the steps of resting the lower surface on a flat surface and placing a users limb in the recess of the platform and rocking back and forth and positioning the rocker in a first position (fig. 4) or a second position (fig. 3). A user is capable of stretching while using the device of Parker.

Conclusion

2. Note the similar device on the Form 892. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (571) 272-4971. The examiner can normally be reached on Mon.-Fri from 9-6 p.m. Interviews Tue. and Thur..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lori Amerson

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